

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

No. 78-1780

GENTRY CROWELL, Secretary of State of the State of Tennessee; RAY BLANTON, Governor of the State of Tennessee and his successors in office; BROOKS McLEMORE, Attorney General of the State of Tennessee and his successors in office; DAVID COLLINS, Coordinator of Elections of the State of Tennessee; and JAMES E. HARPSTER, JACK C. SEATON, TOMMY POWELL, RICHARD HOLCOMB, and LYCLE LANDERS, Commissioners of the State Board of Elections,
Appellants,

VS.

RICHARD MADER, PATRICIA MAE NORTON, MARY RICHARDSON and MARSENA DARLENE WALKER,
Appellees.

MOTION OF APPELLEES TO DISMISS OR AFFIRM

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MOTION OF APPELLEES TO DISMISS OR AFFIRM

The appellees, Richard Mader, Patricia Mae Norton, Mary Richardson, and Marsena Darlene Walker, respectfully move to dismiss or affirm the judgment of the United States District Court for the Middle District of Tennessee in this case. Rule 16(1)(c) and (d).

STATEMENT OF THE CASE

This is a direct appeal from an order granting a permanent injunction and entered on January 15, 1979, by a District Court of three judges specially constituted pursuant to 28 USC §2284. Plaintiffs sought certification of the cause as a class action and the District Court found that the cause met the requirements for a class action as set out in Rule 23 of the Federal Rules of Civil Procedure.

Following the 1970 Federal Decennial Census, the Tennessee General Assembly enacted two alternative plans of apportionment. (Acts 1970, Ch. 381) The second alternative plan was to take effect in the event that the first plan was held unconstitutional. The State of Tennessee acknowledged, in the case of *Kopald v. Carr*, 343 F.Supp. 51, (M.D.Tennessee.1972), that both plans were, in fact, unconstitutional. Id at 52. The District Court in the *Kopald* case, ordered the 1972 elections to be conducted in accordance with the second alternative plan as modified by the Court. Id. at 53. This modified plan reduced the gross variance from the ideal district size to less than 4%. Gross variance is computed by adding the highest positive percentage deviation to the lowest negative deviation. The District Court retained jurisdiction of the case pending legislative action during the 1973 Session.

Following the 1972 elections, the General Assembly adopted a new plan of apportionment for the Senate, which created gross variations from the optimum district size of nearly 18%. Acts 1973, Ch. 403. This plan was codified as Tennessee Code Annotated Section 3-102, and was the plan of apportionment challenged in this case below. Elections were held in 1974 and 1976 pursuant to the plan of apportionment adopted by the legislature in 1973.

It has been stipulated by the parties that each of the appellees registered to vote in 1975 or 1976. None of the appellees in the case were registered to vote during the pendency or at the time of the decision rendered in *Kopald v. Carr, supra*.

This action was commenced on March 8, 1978. Appellees filed a motion for an early hearing date, noting the approach of the 1978 General Elections. This motion was denied, and the matter was heard before a panel of three judges on November 15, 1978. The District Court rendered its opinion on January 15, 1979, finding that TCA 3-102, as enacted was unconstitutional. The order of the Court entered in accordance with the memorandum opinion, enjoins the defendants from conducting any election in accordance with the plan of apportionment set forth in TCA § 3-102 as it existed at that time. Furthermore, the Court retained jurisdiction of the matter, stating: "And in the event no constitutional plan of apportionment of Tennessee Senatorial Districts is enacted by the General Assembly by June 1, 1979, this Court will impose a plan of apportionment." Appellants Jurisdictional Statement at A-8.

On May 17, 1979, Senate Bill No. 712 was passed by both Houses of the General Assembly. The bill was transmitted to the Governor of Tennessee on Friday, May 25, 1979. Pursuant to the Tennessee Constitution, Article III, Section 18, the Bill became law on June 6, 1979, the Governor having returned said bill to the Secretary of State without his signature. Senate Bill 712 amends Tennessee Code Annotated § 3-102, "by deleting the section in its entirety and substituting in lieu thereof" an entirely new plan of apportionment. (See Appendix A.)

MOTION TO DISMISS

The Appellees hereby move to dismiss the appeal on the ground that no justiciable case or controversy exists within the meaning of Article III of the Constitution of the United States. The non-justiciability of this appeal is obvious for two reasons: (1) The statute upon which appellants base their claim has now been repealed; and (2) consideration of Senate Bill 712 is premature.

A. The statute upon which appellants base their claim has been repealed.

The three-judge court below held that Tennessee Code Annotated Section 3-102 is unconstitutional. The Court further granted an injunction enjoining defendants "from conducting or causing to be conducted any primary or general election of state senators pursuant to its provisions." (emphasis supplied) Appellants' Jurisdictional Statement, A-6. Since the date of the Court's order, the Tennessee General Assembly has enacted an amendment to TCA 3-102 which deletes the existing plan of apportionment in its entirety and substitutes therefor an entirely new plan of apportionment. Therefore, any election held pursuant to TCA 3-102, as presently in effect, would not violate the terms of the injunction. To see clearly the mootness of appellants' appeal, one has only to consider that an order of this Court reversing the decision of the Court below would not reinstate or revive the prior plan of apportionment.

Under familiar principles, this Court must review the order of the District Court in light of Tennessee law as it now stands, not as it stood when the order below was entered. *Diffenderfer v. Central Baptist Church of Miami*, 404 U.S. 412, 92 S.Ct. 574, 30 L. Ed. 2d 567 (1972); *Hall v. Beals*, 396 U.S. 45,

90 S.Ct. 200, 24 L.Ed.2d 214 (1969); *United States v. Alabama*, 362 U.S. 602, 80 S.Ct. 924, 4 L.Ed.2d 982 (1960); *United States v. Alaska S.S. Co.*, 253 U.S. 113, 40 S.Ct. 448 (1920). Since Senate Bill 712 (Public Chapter 443, Acts of 1979) repeals the reapportionment plan which was declared unconstitutional by the District Court, the correctness of the District Court's action in enjoining elections pursuant to such a plan is moot; there is no longer a justiciable case or controversy for this Court to consider on appeal.

B. Consideration of Senate Bill 712 is premature.

When the three-judge court held the then-existing plan of apportionment unconstitutional, it retained jurisdiction of the cause stating

"and if the Tennessee General Assembly has not enacted a constitutional scheme of apportionment of state senatorial districts prior to June 1, 1979, the Court will reinstate the *Kopald* plan or will effectuate such other plan as may be presented to the Court that surpasses the *Kopald* plan in achieving the ideal of one person one vote." Appellants' Jurisdictional Statement at A-6, A-7.

The General Assembly has now enacted legislation, which may or may not pass the test of constitutionality set forth in the lower Court's opinion. As of this date, no hearing has been held below to determine the constitutionality of the currently enacted plan of apportionment. Counsel for appellees has requested such a hearing (see Appendix B). Without such a hearing, consideration of the validity of Senate Bill 712 on appeal is premature. For example, appellants set forth in their jurisdictional statement a chart alleging that certain areas have been moved from even-numbered districts to odd-numbered districts. (Jurisdictional Statement, pages 14 and 15) This chart

is not in the record. The information upon which it is based is not in the record. Furthermore, there is no proof in the record of the number of voters which would be moved if the facts alleged in the chart are true.

The District Court has not yet expressly passed on the constitutionality of the new statute, nor has it granted or denied an injunction preventing elections under the new bill. Thus there is no permanent injunction at this time upon which appellants may base an appeal pursuant to 28 USC § 1253.

Finally, the lower court having retained jurisdiction, the matter below is not closed on the question of relief. Should the lower court find merit in appellants' argument that substantial numbers of voters have been disenfranchised, the District Court may order all 33 Senators to stand for election in 1980. The District Courts have broad powers to shape the form of relief. *Baker v. Carr*, 369 US 186; 82 S.Ct. 691; 7 L.Ed. 21 663 (1962); *Reynolds v. Sims*, 377 US 533, 84 S. Ct. 1362 (1964). Such an order would properly follow a full hearing on the validity of S B 712. It would ensure that all voters would have an opportunity to ballot for Senator prior to the 1980 census.

MOTION TO AFFIRM

Alternatively, appellees move to affirm the judgment of the three-judge court that TCA § 3-102, as it existed on January 15, 1979, violated the Equal Protection clause of the Fourteenth Amendment to the United States Constitution by failing to draw legislative districts of equal population as nearly as may be practicable. It is manifest that the question upon which the decision of the cause depends is so insubstantial as not to need further argument.

In considering the constitutionality of TCA § 3-102, the District Court was confronted with a stipulation by the parties that the gross deviation from the optimum district size was 18% and its own finding that "No justification has been proved by the state." Appellants Jurisdictional Statement at A-6. There is no question that the basic principle of law is that the legislative district be constructed of equal population as nearly as is practical. *Reynolds v. Sims, supra* at 577, 84 S.Ct. at 1390. However, as stated in the *Reynolds* case, deviations from the ideal district size may be permitted upon a showing by the state of "legitimate considerations incident to the effectuation of a rational state policy." In the lower court, appellants offered as a justification the preference, under the state constitution, for maintaining integrity of local political subdivision lines. However, the three-judge court found that such a policy was not consistently adhered to under the plan of apportionment. Appellants did raise the disenfranchisement argument in their brief and on oral argument below; the three-judge district court properly dismissed such an issue summarily.

Appellants speculate that any change from TCA § 3-102 as it existed at the time of the Court's order will necessarily result in some voters being moved from odd-numbered to even-numbered districts. The consequence of this is that some voters who otherwise would vote for senator in 1980, will not be allowed to vote for the office of state senate until 1982. Appellants further speculate that following the 1980 Decennial Census and the subsequent re-apportionment, some voters may again be moved and will not be able to vote until 1984. Appellants speculate again that some voters moved in 1981 will be the same as those moved in 1979, leading appellants to argue that some voters will not be able to vote for senator for 8 years. This triple conjecture is the basis of Appellant's argument that the possibility of disenfranchisement justifies deviations con-

tained in previous TCA § 3-102. It is a conjecture based on speculation and grounded in guesswork. Appellants conclusions are not supported by the record. Nor can it be shown that the disenfranchisement problem justifies the variance as it existed prior to this case. In order to justify such gross deviation as is presented in this case, the state has the burden of proving that the avoidance of disenfranchisement amounts to "a legitimate consideration incident to the effectuation of a rational state policy." *Reynolds v. Sims, Supra, Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321, 37 L. Ed. 2d 298 (1973). No such rational state policy can be shown to exist. As stated in *Cohen v. Maloney*, 410 F.Supp. 1147 (D.C. Del. 1976).

Demonstrating that there is a rational state policy requires not merely a showing that the asserted policy is rational, but also that a coherent policy does in fact exist. This is not to say that the defendants need prove the legislators' subjective intent to implement the policy at the time they enacted the apportionment plan. It does mean that the defendants must prove that the asserted policy has been consistently adhered to by the state and local government in its apportionment scheme. At 1147.

There is and can be no showing of consistent adherence to a policy of avoiding disenfranchisement. The 1972 elections to state senate were held pursuant to a court-ordered modification of a plan which the legislature drew. *Kopald v. Carr, supra*. This plan of apportionment contained a gross deviation from the ideal district size of less than 4.5%. The following year, the General Assembly enacted the plan of apportionment held unconstitutional by the three-judge court in this case. That plan moved significant numbers of people from odd-numbered districts to even-numbered districts and vice versa, while at the same time creating a gross deviation of 18%. No consideration was given to the fact that the apportionment scheme adopted

by the General Assembly in 1973 might "disenfranchise" voters who otherwise would have cast a ballot for a state senator in 1974. Compounding this problem, the General Assembly adopted in 1976 a plan of apportionment for three state senate districts in Shelby County, Tennessee, which plan had the actual effect of disenfranchising black voters in precinct 26-2 in the City of Memphis. This plan was subsequently held unconstitutional in the case of *Brawner v. Crowell*, 434 Fed. Supp. 1119 (D.C.W. Tenn. 1977). In considering this so-called "Gillock Amendment," the General Assembly did not take into account the potentially "disenfranchising" effect of that legislation. In addition the problem is one that naturally occurs as a result of each decennial census; shifts in population necessitates changes in district lines.

Furthermore, the problem complained of by appellants is not properly "disenfranchisement" as that word is traditionally used. See Black's Law Dictionary, at 554 (Revised 4th Ed). Appellants do not allege that districts have been drawn so as to deprive citizens of residency in a Senate District. c.f. *Gomillion v. Lightfoot*, 364 U.S. 339, 81 S.Ct. 125 (1960). Appellants do not suggest that transferred voters will be denied the right to vote in elections held in the District in which they reside. Nor do appellants suggest that prior residents of a given district will vote more frequently for senators from that same district than will the newly transferred voters. All voters who reside in a given district will be allowed to vote as each election is held. The gravamen of appellants' complaint is that voters are "disenfranchised" because they will not be able to vote in the district in which they formerly resided. However, since legislators represent "people, not trees or acres," *Reynolds v. Sims, supra* at 562, it does not matter that a transferred voter would have voted had he not been transferred. A transferred voter is no longer a constituent of his former district;

he is a constituent of his new district. Disenfranchisement only occurs if a citizen is denied the right to vote for a senator from his district in the quadrennial election. There is no such denial of the right to vote in this case; therefore there is no disenfranchisement.

CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or affirmed.

Respectfully submitted,

JOHN L. RYDER

Counsel for Appellees,
Richard Mader, Patricia Mae
Norton, Mary Richardson, and
Marsena Darlene Walker

APPENDIX

APPENDIX A

SENATE CHAMBER

**State of Tennessee
Nashville**

June 7, 1979

**Honorable Gentry Crowell
Secretary of State
State Capitol Building
Nashville, Tennessee 37219**

Dear Mr. Crowell:

This is to certify that I transmitted Senate Bill No. 712 to the Governor on May 25, 1979.

Very truly yours,

**/s/ ELSIE CHASTAIN SMITH
ECS/ds**

STATE OF TENNESSEE

**Lamar Alexander
Governor**

**Executive Chamber
Nashville 37219
June 7, 1979**

Dear Mr. Secretary of State:

I am hereby returning Senate Bill 712 without my signature. This bill, which reapportions the state senate, was passed by

the General Assembly in response to court order declaring the present plan of apportionment unconstitutional. However, the plan set forth in Senate Bill 712 is itself unconstitutional. I strongly object to it on several bases.

The bill splits twenty-one counties. Such excessive division of small counties is unnecessary and, in my opinion, violates state law.

What is worse, the bill systematically takes away from tens of thousands of Tennesseans their right to vote for state senator. The bill moves people from odd-numbered senate districts to even-numbered districts. Therefore, an individual who lived in an even-numbered district prior to this plan would have last voted for a senator in 1976. Under Senate Bill 712 that individual will have to wait until 1982, rather than 1980, before he gets an opportunity to vote for state senator. Of course, after 1980 these same voters may be reapportioned into districts that do not elect senators until 1982. It could go on forever, at least until angry voters get tired of having their votes taken away for political reasons.

The most objectionable portion of the plan may be, however, the Hamilton County situation. Under this bill the Hamilton County portion of District 9 is not contiguous to the balance of District 9. Apparently the only point at which the two portions touch is a stretch of the Tennessee River between the two counties. There is no bridge, no ferry, no access between the two. Further, two precincts are placed in Senate District 10 in Hamilton County, although they touch no part of District 10 at any point. Such districts do not meet the state constitution's requirement that various portions of the senate districts must be contiguous.

Senate Bill 712 defies the constitution of the State of Tennessee, defies established case law under the Fourteenth Amend-

ment, and defies common sense. It represents blatant and outrageous gerrymandering.

I would have vetoed the bill. But the Democratic majority is so determined to protect itself that a veto would surely be overridden. I therefore do not want to waste the taxpayer's hard-earned dollars to bring the legislature back for such a partisan political matter.

Sincerely,

/s/ LAMAR ALEXANDER

(Received June 12, 1979, Secretary of State)

**PUBLIC CHAPTER NO. 443
SENATE BILL NO. 712**

By Hamilton, Crouch, Mr. Speaker Wilder
Substituted for: House Bill No. 604
By Burnett (Fentress)

AN ACT To amend Tennessee Code Annotated, Section 3-102,
relative the reapportionment of the State Senate.

WHEREAS, It is the intent of the General Assembly of the State of Tennessee to equitably apportion itself with due consideration to Sections 5 and 6 of Article II of the Tennessee Constitution and the Fourteenth Amendment to the United States Constitution; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF
THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 3-102, is amended by deleting the section in its entirety and substituting in lieu thereof the following:

State Senatorial Districts-Residence Requirements.— Until the next enumeration of qualified voters and apportionment of senators, the state senatorial districts shall be composed as follows:

All subdistrict lines cited in the following descriptions are those in effect as of May 1, 1979, unless otherwise noted.

(1) Senate District 1. Carter and Johnson Counties and that portion of Washington County which is not established as a portion of Senate District 3, as set out hereinafter.

(2) Senate District 2. All of Sullivan County except voting precincts 14 MP and 14 CH.

(3) Senate District 3. Greene, Hawkins, Unicoi Counties, Sullivan County voting precincts 14 MP and 14 CH, that portion of Washington County lying within the Sulphur Springs census division and the Telford census division, and Hancock County magisterial districts 5, 6, 7, 8, 9, 10 and 12.

(4) Senate District 4. Grainger, Hamblen, Jefferson, Cocke and Union Counties, Hancock County magisterial districts 1, 2, 3, 4 and 11, and Claiborne County magisterial districts 3 and 4.

(5) Senate District 5. Anderson County, the following voting wards of the City of Knoxville: SH 19, 36, 37, 38, 39, 40 and 41, and the following voting precincts of

Knox County: Corryton, Dante, Fort Sumpter, Gibbs, Brickey, Heiskell, Hills, Pedigo, Halls, Powell, Karns and Solway.

(6) Senate District 6. The following voting precincts of Knox County: Huffs, Sunnyview, Ramsey, Riverdale, Dora Kennedy, Ellistown, Maloneyville, Shannondale, Ritta, Skaggston, Carter, Thorngrove, Kings, Mount Olive, Rocky Hill, Sevier Homes, Vestal, Gap Creek and Hopewell, and the following voting wards of the City of Knoxville: 13, Middle 14, East 14, East 15, West 15, South 16, North 16, FH 25, 25 Vestal, East 26, West 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 49.

(7) Senate District 7. The following voting precincts of Knox County: Lonas, Hardin Valley, Concord, Farragut, Cedar Bluff, Bluegrass and Ball Camp, the following voting wards of the City of Knoxville: 1, 6, 7, 8, 9, North 10, South 10, East 11, Middle 11, West 11, 12, East 17, West 17, 18, FH 19, 20, 21, 22, South 23, North 23, South 24, North 24, Seq. 24, 42, 43, 44, 45, 46, 47, 48, North 50, South 50 and 51, the Glendale precinct of Loudon County, and the following precincts of Blount County: Binfield, Maryville E. College, Maryville Jr. High, Fairview City, Fairview, Friendsville City, Friendsville, Miser Station, Alcoa High School, Louisville School and Mentor.

(8) Senate District 8. Sevier and Monroe Counties, all of Blount except that in Senate District 7, and all of Loudon County except that in Senate District 7.

(9) Senate District 9. Bradley, Polk and McMinn Counties, Meigs County magisterial districts 1, 2, 3 and 4, and the following voting precincts of Hamilton County: Bakewell, Dallas, Lakesite, Middle Valley, Mowbray, Sale Creek and Soddy Daisy North.

(10) Senate District 10. The following Hamilton County voting precincts: Airport, Alton Park, Amnicola, Avondale, Bustown, City Hall, Court House, Downtown, Dupont, Eastdale, Falling Water, Glenwood, Howard, Lupton City, Moccasin Bend, Mountain Creek, North Chattanooga, North Woods, Orchard Knob, Piney Woods, Riverview, St. Elmo, Stuart Heights, Valdeau City, Valley View City, Wauhatchie City, Fairmount, Falling Water County, Lookout Mountain, Red Bank 1, Red Bank 2, Red Bank 3, Red Bank 4, Signal Mountain East, Signal Mountain West, Soddy Daisy South, Valdeau County, Valley View County, Walden and Wauhatchie County.

(11) Senate District 11. The following Hamilton County voting precincts: Bonny Oaks, Brainerd, Brainerd Hills, Cedar Hills, Clifton Hills, Concord, East Brainerd, East Chattanooga, East Lake, East Side, Eastgate, Highland Park, Hixon, Kingpoint, Lake Hills, Missionary Ridge, Murry Hills, Northgate, Ridgedale, Sunnyside, Tyner, Woodmore, Apison, Birchwood, Collegedale, East Ridge 1, East Ridge 2, East Ridge 3, East Ridge 4, East Ridge 5, Harrison, Meadowview, Ooltewah, Ridgeside, Snowhill and Westview.

(12) Senate District 12. Cumberland, Morgan and Campbell Counties, all of Roane County except Glen Alice, Fairview, Midway, Paint Rock, Renfro and Johnson School House precincts of Roane County, all of Claiborne County except that portion of Senate District 4, and Scott County magisterial districts 1, 2, 3 and 5.

(13) Senate District 13. Putnam, Jackson, Clay, Overton, Pickett, Fentress, White, DeKalb and Van Buren Counties, and Scott County magisterial districts 4, 6 and 7.

(14) Senate District 14. Bledsoe, Rhea, Sequatchie, Marion, Warren and Franklin Counties, Meigs County

magisterial district 5, all of Grundy County except magisterial district 3, and that portion of Roane County lying in the Glen Alice, Fairview, Midway, Paint Rock, Renfro and Johnson School House precincts.

(15) Senate District 15. Sumner, Macon, Trousdale and Smith Counties, and Wilson County except magisterial districts 2, 11, 13 and 16.

(16) Senate District 16. All of Moore, Rutherford, Cannon and Coffee Counties, magisterial district 3 of Grundy County, and that part of Lincoln County not included in Senate District 17.

(17) Senate District 17. All of Marshall, Giles, Maury and Bedford Counties, and that portion of Lincoln County in magisterial districts 1, 2, 4 and the Howell Hill and Lincoln precincts of magisterial district 8.

(18) Senate District 18. That portion of Davidson County lying within councilmanic districts 3, 4, 7, 8, 9, 10 and 11, the 2nd, 3rd, 4th, 5th, and 6th precincts of councilmanic district 1, the 1st precinct of councilmanic district 5, and 2nd and 3rd precincts of councilmanic district 6, and the 1st and 4th precincts of councilmanic district 22.

(19) Senate District 19. That portion of Davidson County lying within councilmanic districts 2, 17, 18, 19, 20 and 21, the 1st precinct of councilmanic district 1, the 2nd, 3rd, and 4th precincts of councilmanic district 5, the 1st precinct of councilmanic district 6, the 1st and 2nd precincts of councilmanic district 26, the 1st, 2nd and 3rd precincts of councilmanic district 27 and the 1st precinct of councilmanic district 28.

(20) Senate District 20. That portion of Davidson County lying within councilmanic districts 12, 13, 15, 16, 29, 30 and 31, the 2nd, 3rd, and 4th precincts of council-

manic district 28, and the 5th precinct of councilmanic district 32, and Wilson County magisterial districts 2, 11, 13 and 16.

(21) Senate District 21. That portion of Davidson County lying within councilmanic districts 23, 24, 33, 34 and 35, the 2nd precinct of councilmanic district 22, the 1st, 2nd, 3rd, 4th and 5th precincts of councilmanic district 25, the 3rd precinct of councilmanic district 26, the 5th precinct of councilmanic district 27, and the 1st, 2nd, 3rd and 4th precincts of councilmanic district 32, Cheatham County magisterial districts 6 and 7, and Dickson County except magisterial districts 2 and 7.

(22) Senate District 22. Montgomery, Robertson, Stewart and Houston Counties, Cheatham County magisterial districts 1, 2, 3, 4 and 5, and Humphreys County magisterial districts 1, 2 and Plant precinct of magisterial district 4.

(23) Senate District 23. Hickman, Williamson, Lewis, Lawrence and Benton Counties, Humphreys County except magisterial districts 1 and 2 and Plant precinct of magisterial district 4, Dickson County magisterial districts 2 and 7, and Wayne County except Beech Creek voting precinct.

(24) Senate District 24. Lake, Obion, Weakley, Henry and Carroll Counties and the following portions of Dyer County: Bogota and 5th consolidated precincts of magisterial district D.

(25) Senate District 25. Madison and Gibson County and Henderson County magisterial districts 1 and 3.

(26) Senate District 26. Fayette, Hardeman, McNairy, Hardin, Chester, Perry and Decatur Counties, Henderson County except magisterial districts 1 and 3, and Beech Creek voting precinct of Wayne County.

(27) Senate District 27. Tipton, Haywood, Lauderdale and Crockett Counties, Dyer County except the following portions: Bogota and 5th consolidated precincts of magisterial district D, and that portion of Shelby County lying within the following Shelby County voting districts: Stewartsboro, Arlington, Brunswick, Kerrville, Lakeland and Eads.

(28) Senate District 28. That portion of Shelby County lying within the Shelby County voting districts of McConnell and Woodstock and the following voting precincts of Memphis: 21-2, 21-3, 40-1, 40-2, 41-1, 41-2, 41-3, 42-1, 42-2, 43-1, 43-2, 52-1, 52-2, 52-3, 53-1, 53-2, 53-3, 62-1, 62-2, 69-1, 69-2, 70-1, 70-2, 70-3, 71-1, 71-2, 71-3, 72-1, 72-2, 72-3, 72-4, 72-5, 72-6.

(29) Senate District 29. That portion of Shelby County lying within the following voting precincts of Memphis: 1, 2, 7, 11-1, 11-2, 12, 13-1, 13-2, 13-3, 14-1, 14-2, 15, 18, 22, 25-1, 25-2, 25-3, 26-1, 27-1, 27-2, 27-3, 32, 34-2, 35-2, 35-3, 39, 49-1, 50-1, 51.

(30) Senate District 30. That portion of Shelby County lying within the following voting precincts of Memphis: 16-1, 16-2, 16-3, 17-1, 17-2, 20-1, 20-2, 20-3, 21-1, 28-1, 28-2, 29-1, 29-2, 30, 31-1, 31-2, 31-3, 31-4, 33, 36-1, 36-2, 36-3, 37, 38-2, 44-4, 44-5, 45-1, 45-3, 45-4, 47-1, 47-2, 47-3, 45-2, 59-1, 59-2, 59-3, 61-1, 61-2.

(31) Senate District 31. That portion of Shelby County lying within the following voting precincts of Memphis: 38-1, 38-3, 44-1, 44-2, 44-3, 46-1, 46-2, 46-3, 54-1, 54-2, 55-1, 55-2, 56-1, 56-2, 57, 58-1, 58-2, 58-3, 58-4, 58-5, 63-1, 63-2, 64-1, 64-2, 65-1, 65-2, 66-1, 66-2, 67-1, 67-2, 68-2, 68-3, 73-1, 73-2, 73-3, 73-4, 73-5, 74-2, 74-3, 74-4, 74-5, 74-7, 74-8, 74-9.

(32) Senate District 32. That portion of Shelby County lying within the following Shelby County voting districts: Bartlett 1, Bartlett 2, Bartlett 3, Bartlett 4, Capleville, Collierville 1, Collierville 2, Cordova, Forest Hills, Germantown 1, Germantown 2, Germantown 4, Germantown 5, Germantown 6, Germantown 7, Hickory Hill, Locke, Lucy, Millington 1, Millington 2, Morning Sun, Mullins, Ross Store, and the following City of Memphis voting precincts: 60-2, 60-5, 60-7, 67-3, 68-1, 73-6, 74-1, 74-6, 78-5, 79-6, 80, 81-1, 81-2, 81-3, 81-4, 83, 84, 85, 86, 87-1, 87-2, 87-3, 88-1, 88-2, 89-1, 89-2, 90-1, 90-2.

(33) Senate District 33. That portion of Shelby County lying within the following City of Memphis voting precincts: 26-2, 34-1, 48, 49-2, 50-2, 60-1, 60-3, 60-4, 60-6, 60-8, 75-1, 75-2, 75-3, 75-4, 75-5, 75-6, 75-7, 75-8, 76-1, 76-2, 76-3, 76-4, 76-5, 77-1, 77-2, 77-3, 78-1, 78-2, 78-3, 78-4, 79-1, 79-2, 79-3, 79-4, 79-5, 82-1, 82-2, 82-3.

All references to enumeration districts are to those districts as so designated in the official 1970 federal census. A reference to a specific enumeration district includes that district in all of its parts although parts thereof may be designated by a letter of the alphabet in addition to its numerical designation.

It is the legislative intent that all senate districts shall be contiguous and, toward that end, if any enumeration or voting district or other geographical entity designated as a portion of a senate district is found to be non-contiguous with the larger portion of the senate district, it shall be constituted a portion of the senate district smallest in population to which it is contiguous.

SECTION 2. A candidate for election to the office of senator shall be required to reside in the senatorial district from which

he seeks to be elected for one (1) year immediately preceding the election.

SECTION 3. Senators and representatives elected to the Ninety-first General Assembly shall, until the next general election of members of the General Assembly, represent their respective districts as constituted prior to the effective date of this act. At the November, 1980, general election and thereafter until changed by law, senators and representatives shall be elected to represent districts as provided in this act.

However, nothing herein shall be construed as depriving any member of the Senate of the Ninety-first General Assembly of his office or as affecting or modifying the requirement of staggered senatorial terms or any other provisions of Article II, Section 3 of the Constitution of Tennessee, and those senators elected in districts designated by odd numbers in the General Election of 1978 shall continue to represent their respective districts as constituted both before and after the effective date of this act, until the election of their successors at the November, 1982 general election.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect on becoming law, the public welfare requiring it.

SENATE BILL NO. 712

PASSED: May 17, 1979

/s/ **JOHN S. WILDER**

Speaker of the Senate

/s/ **NED McWHERTER**

Speaker of the House of
Representatives

APPROVED this day of 19..

.....
Governor

SENATE CHAMBER
STATE OF TENNESSEE
Nashville
June 13, 1979

The Honorable Gentry Crowell
Secretary of State
State of Tennessee

Dear Mr. Secretary:

Senate Bill No. 712 contains a clerical error on page 6 in the second paragraph, line 6. The word "denate" appears be-

tween the words "senate" and "district". A corrected page 6, on which the word "denate" has been deleted, is attached.

Very truly yours,

/s/ **ELSIE CHASTAIN SMITH**

Chief Engrossing Clerk
of the Senate

ECS/smc
Enclosure

All references to enumeration districts are to those districts as so designated in the official 1970 federal census. A reference to a specific enumeration district includes that district in all of its parts although parts thereof may be designated by a letter of the alphabet in addition to its numerical designation.

It is the legislative intent that all senate districts shall be contiguous and, toward that end, if any enumeration or voting district or other geographical entity designated as a portion of a senate district is found to be non-contiguous with the larger portion of the senate district, it shall be constituted a portion of the senate district smallest in population to which it is contiguous.

SECTION 2. A candidate for election to the office of senator shall be required to reside in the senatorial district from which he seeks to be elected for one (1) year immediately preceding the election.

SECTION 3. Senators and representatives elected to the Ninety-first General Assembly shall, until the next general election of members of the General Assembly, represent their re-

spective districts as constituted prior to the effective date of this act. At the November, 1980, general election and thereafter until changed by law, senators and representatives shall be elected to represent districts as provided in this act.

However nothing herein shall be construed as depriving any member of the Senate of the Ninety-first General Assembly of his office or as affecting or modifying the requirement of staggered senatorial terms or any other provisions of Article II, Section 3 of the Constitution of Tennessee, and those senators elected in districts designated by odd numbers in the General Election of 1978 shall continue to represent their respective districts as constituted both before and after the effective date of this act, until the election of their successors at the November, 1982 general election.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect on becoming law, the public welfare requiring it.

APPENDIX B

LAUGHLIN, HALLE, REGAN, CLARK & GIBSON

Attorneys at Law

2201 First Tennessee Bank Building

Memphis, Tennessee 38103

(901) 525-1593

June 7, 1979

The Honorable L. Clure Morton
United States District Judge
United States Courthouse
Nashville, TN. 37219

Re: Mader v. Crowell

No. C-78-3079 NA-CV

Dear Judge Morton:

Pursuant to the order of the District Court entered on January 15, 1979, this Court retained jurisdiction of the above referenced case for purposes of considering the constitutionality of any action taken by the General Assembly prior to June 1, 1979. It appears at this time that the General Assembly has passed certain legislation modifying the apportionment of State Senate Districts in Tennessee. This bill has now become law without the Governor's signature. Therefore, there is now an act to be considered by the Court pursuant to its earlier order.

By this letter, we are requesting, as counsel for the plaintiffs, a hearing on the constitutionality on Senate Bill 712 in order to dispose of this case. We would appreciate an opportunity to take discovery or submit briefs prior to such a hearing.

Very truly yours,

JOHN L. RYDER

JLR/ap

cc: Mr. William W. Hunt, III
Assistant Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219